

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

IN THE MATTER OF A WAIVER OF)	AH Docket No. 20-O-004
ANIMAL HEALTH RULES)	
Section ATCP 10.32 (2) (a))	
Wisconsin Administrative Code, for)	ORDER GRANTING A WAIVER FROM
Swine moved intrastate to)	PRRS/PED TESTING REQUIREMENTS,
Load-out facilities)	WITH CONDITIONS.
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)	
)	

INTRODUCTION

Under s. ATCP 10.93, Wis. Admin. Code, the State of Wisconsin Department of Agriculture, Trade and Consumer Protection (department) may waive provisions of ch. ATCP 10, Wis. Admin. Code (Animal Health Program) if the department finds that the waiver is reasonable and necessary, is consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law. The state veterinarian must issue the waiver in writing.

Pursuant to s. ATCP 10.93, Wis. Admin. Code, the department hereby makes the following findings and conclusions and issues the following order waiving PRRS/PED testing requirements, with conditions.

FINDINGS OF FACT

(1) The department is responsible for administering Wisconsin’s animal health program under ch. 95, Wis. Stats. The program is designed to protect the health of animals in this state, and to prevent, control and eradicate communicable diseases among animals. The department has broad authority to adopt rules interpreting statutes under its jurisdiction (see s. 93.07 (1), Wis. Stats.).

(2) Under s. ATCP 10.93, Wis. Admin. Code, the department may waive any provision of ch. ATCP 10, Wis. Admin. Code, if the department finds that the waiver is reasonable and necessary, is consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law. The state veterinarian must issue the waiver in writing.

(3) Section ATCP 10.32 (2), Wis. Admin. Code, requires porcine reproductive and respiratory syndrome and porcine epidemic diarrhea virus (PRRS/PED) testing as follows:

(a) Test required.

1. Except as provided in par. (b), no person may move commercial swine within this state unless the herd of origin has tested negative on a porcine reproductive and respiratory syndrome and porcine epidemic diarrhea virus test conducted not more than 90 days prior to the intrastate movement and documentation of the test reports are made available at the time

of sale and to the department upon request. Testing under this paragraph shall comply with s. ATCP 10.291.

2. If the swine's herd of origin does not meet the requirements under subd. 1., the department shall quarantine the herd of origin and follow the procedures under s. ATCP 10.291 (4) and (5) before any swine may be moved from the premises.

3. If commercial exhibition swine originate from Wisconsin and return to Wisconsin after an exhibition in another state, the exhibitor must notify the department of the movement before returning to Wisconsin. The department shall quarantine the returning swine, herd of origin, or both and follow the procedures under s. ATCP 10.291 (4) and (5) before any swine may be moved from the premises. This subdivision does not apply if the out-of-state exhibition organizer requires all participating swine to test negative for porcine reproductive and respiratory syndrome and porcine epidemic diarrhea virus within 90 days prior to the event.

(b) Exemption. Paragraph (a) does not apply if any of the following apply:

1. The swine are moved directly to a slaughtering establishment for slaughter or directly to an animal market to be sold at a sale where all swine on the market premises are shipped directly to a slaughtering establishment.

2. The swine are moved to one fair or exhibition under s. ATCP 10.87 prior to being shipped directly to slaughter or directly to an animal market to be sold at a sale where all swine on the market premises are shipped directly to a slaughtering establishment.

3. Commercial swine moved directly to an animal market, if all swine on the market premises the day of the sale are shipped directly to slaughter.

(4) On June 19, 2020, Menno Borntreger requested in writing that the Division of Animal Health waive the requirements under s. ATCP 10.32 (2) (a), Wis. Admin. Code, for a swine load-out facility. The Division granted a waiver (20-O-003) on July 6, 2020 for swine moved to Borntreger's load-out facility, with conditions.

(5) On July 10, 2020, Aaron Schuett, President of the Waukesha County Fair, requested in writing that the Division of Animal Health waive the requirements under s. ATCP 10.32 (2) (a), Wis. Admin. Code, for a different swine load-out facility.

(6) Through verbal discussions with other members of the swine industry, the Division has found that multiple swine load-out facilities are being planned in similar circumstances. Rather than address each facility individually, the Division could issue a waiver to address all swine load-out facilities that meet a set of conditions.

(7) The requirement to test for PRRS/PED is a rule provision [see s. ATCP 10.32 (2) (a), Wis. Admin. Code] and not a statutory requirement.

(8) A waiver to PRRS/PED testing requirements under s. ATCP 10.32 (2) (a), Wis. Admin. Code, would be reasonable and necessary, consistent with the objectives of ch. ATCP 10, Wis. Admin. Code, for animal disease control, and would not conflict with state statutes.

(9) The Division of Animal Health could properly grant a waiver of s. ATCP 10.32 (2) (a), Wis. Admin. Code, to PRRS/PED testing requirements for swine moved intrastate to swine load-out facilities, under the following conditions:

- a. No other swine may be kept at the premises.
- b. All swine moved to the premises must be shipped directly to slaughter on the day of arrival.
- c. The swine load-out facility organizer must maintain records of all swine that go through the premises for at least five years, including:
 - i. Farm of origin
 - ii. Number of animals by description (breed/color and age/class – for example: 8 white market hogs, 5 Tamworth cull sows, etc.); identification (tag, tattoo), if available
 - iii. Date of arrival and departure
 - iv. Slaughter plant destination

CONCLUSIONS OF LAW

(1) This waiver does not affect any other provisions of ch. ATCP 10, Wis. Admin. Code.

(2) This waiver does not conflict with any requirements under ch. 95, Wis. Stats.

(3) Pursuant to s. ATCP 10.93, Wis. Admin. Code, the department may grant a written waiver from a requirement under ch. ATCP 10, Wis. Admin. Code, if the department finds that the waiver is reasonable and necessary, is consistent with objectives of ch. ATCP 10, Wis. Admin. Code, and will not conflict with state law.

(4) The department has made the findings required under s. ATCP 10.93, Wis. Admin. Code.

(5) Pursuant to s. ATCP 10.93, Wis. Admin. Code, and Findings of Fact (1) through (9), the department should waive PRRS/PED testing requirements under s. ATCP 10.32 (2) (a), Wis. Admin. Code, with conditions.

ORDER

NOW, THEREFORE, it is ordered pursuant to s. ATCP 10.93, Wis. Admin. Code, that:

(1) The department grants a waiver from PRRS/PED testing requirements for swine moved intrastate to swine load-out facilities, under s. ATCP 10.32 (2) (a), Wis. Admin. Code, under the following conditions:

- a. No other swine may be kept at the premises.
- b. All swine moved to the premises must be shipped directly to slaughter on the day of arrival.
- c. The swine load-out facility organizer must maintain records of all swine that go through the premises for at least five years, including:
 - i. Farm of origin
 - ii. Number of animals by description (breed/color and age/class – for example: 8 white market hogs, 5 Tamworth cull sows, etc.); identification (tag, tattoo), if available
 - iii. Date of arrival and departure
 - iv. Slaughter plant destination

(2) This waiver will remain in effect until formally rescinded by order of the State Veterinarian.

Dated this 16th day of July, 2020

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: **Darlene M. Konkle**
Darlene Konkle, DVM, MS, DACVIM
State Veterinarian